

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

Clerk's Minutes

**PRELIMINARY HEARING
Before the Honorable Robert H. Jacobvitz**

x Chris Wilson, Courtroom Deputy

x I certify that an electronic sound
recording of this proceeding was made.

FTR Recorded Proceeding _x_
TIME COMMENCED: 3:17 pm

8/25/2014

CASE NAME/NUMBER:
Fred Dale Van Winkle, No. 7-13-11743-j7

PH: Motion to Avoid Lien of Bellview Valley Land Company, John H. Williams and Ellen V. Williams
(Doc. 23)

Dtr: Trey Arvizu, phone
Bellview, John and Ellen Williams: W. T. Martin, Jr., obj#30, phone

SUMMARY: The Court sets a deadline of Monday, Sept. 22nd for stipulated facts and a briefing deadline of October 6, 2014. After the stipulations and briefs are filed, then the court will make a written decision. Then after the decision on the legal question, the Court will schedule a status conference relating to this motion. Court will prepare Order Resulting from this hearing.

Arvizu: I think the only point of contention is the valuation of the property and the amount of the judgment. It would probably be appropriate to set it for final hearing, but we do need to get it set.

Martin: I apologize for some confusion. Mr. Van Winkle is deceased and he was not married when he died. So the homestead exemption is gone. I'm not sure about the number question. It has to do with the balance of the judgment lien creditors. I'd ask for a motion to lift the stay. I'm just not clear where we are.

Arvizu: My position is that the homestead was preserved when the petition was filed. The amount of the judgment needs to be amended.

Ct: Do you agree that on the date the BK was filed it was the debtor's separate property?

Arvizu: Yes.

Ct: Who is residing at the property now?

Arvizu: His son is living in the property now. This is a single case.

Ct: If the debtor was married when the case was filed.....

Arvizu: He wasn't married.

Ct: The legal issue is what is the relevant date and did the debtor reside there on the filing date. Mr. Martin, do you agree that is the legal issue?

Martin: Under the state law on the exemption, once he dies and has no wife. The son is an adult son, then that homestead is lost. The estate cannot claim the exemption, so I think the state law would control. The adult son has only recently moved into the home. If he's there, it's been probably a month.

Ct: Is there an issue about whether the property was a homestead exemption?

Martin: I don't think so.

Ct: Usually I ask parties to file stipulated facts asking the court to decide the legal issue.

Martin: That's fine with me. I don't think there are any facts at issue here.

Ct: Did the debtor reside on the petition date..... now he doesn't live there. If the parties stipulate to all the facts, then we will issue a decision on the legal question and set a status conference. These are facts.

Martin: Could we do briefing?

Ct: Let's set a briefing deadline. Let me fix some deadlines. Simultaneous briefing ok?

Martin: Fine with me. I'd like two weeks. I am set to be out of state from 8/27 through 9/6.

Ct: How about Monday, Sept. 22nd for stipulated facts and a briefing deadline of October 6, 2014. After the stipulations and briefs are filed, then the court will make a written decision. Then after the decision on the legal question, we will schedule a status conference relating to this motion. We'll issue an order from today's hearing..